

IN THE MATTER OF : BEFORE THE
SCOTT VAN DER MEID : HOWARD COUNTY
 : BOARD OF APPEALS
Petitioner : HEARING EXAMINER
 : BA Case No. 06-025V

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DECISION AND ORDER

On August 21, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Scott Van Der Meid, Petitioner, for a variance to reduce the 50-foot front setback to 10 feet for a porch to be located in an R-20 (Residential – Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Scott Van Der Meid testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 10504 Patuxent Ridge Way, is located in the 6th Election District on the east side of Patuxent Ridge Way about 110 feet north of Gorman Road in Laurel (the “Property”). The Property is identified on Tax Map 41, Block 24 as Parcel 442, Lot 6. The

Property is part of the Phelps Manor Section 1 subdivision which was recorded as Plat No. 5613 on September 3, 1983.

The Property is a pentagonal-shaped lot consisting of about 0.55 acres, or 23,958 square feet. The lot has about 117 feet of frontage on Patuxent Ridge Way and is about 206 feet deep.

The Property is improved with a two-story residential dwelling that is over 150 years old. The dwelling is situated diagonally on the Property and faces Gorman Road. About one-half of the home sits within the 50-foot front setback required in the R-20 zone; the existing front porch is about 11 feet from the front lot line. A variance for the porch was granted by the Board of Appeals in 1985 (BA Case No. 85-19V).

Attached to the rear of the house, in the northern portion of the lot, is a two-bay garage. The garage is accessed from a driveway from Patuxent Ridge Way beginning at the northwest corner of the lot. The topography of the Property is generally level. Mature maple trees line the street frontage.

2. The Petitioner, the owner of the Property, proposes to construct a porch along the west side of the house. The porch will match the existing front porch in design and scale. The south corner of the porch will have a gazebo design. This corner of the porch will be situated about 10 feet from the front lot line and therefore will encroach 40 feet into the 50-foot side setback required by Section 108.D.4.b(1)(a)(ii).

3. Vicinal properties are also zoned R-20 and are improved with residential dwellings.

4. Mr. Van Der Meid testified that the owner in 1985 intended to build a wrap-around porch in order to restore the historical look of the home.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find that the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of

the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

Ordinarily, existing structures may not be considered “unique” features of a property. In this case, however, the existing home is over 150 years old and predates the advent of zoning in Howard County. The house is situated partially within the required 50-foot setback area. As such, it is a noncomplying structure and therefore constitutes a unique physical condition of the Property. The Petitioner desires to add on to the home by completing the construction of a wrap-around porch, a portion of which has previously been granted variance approval by the Board. A porch of this nature is not only reasonable and customary for this type of home, but will also help restore the historical appearance of the structure. It is impossible, however, to construct the porch without also encroaching into the front setback.

Consequently, I find that the location of the noncomplying home is a unique physical condition that causes the Petitioner practical difficulties in complying with the setback requirement,

in accordance with Section 130.B.2.a(1).

2. The porch will be used for permitted residential purposes and will not change the nature or intensity of the use. The street frontage is landscaped with mature maple trees and adequately buffers the Property. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the location of the noncomplying structure on the lot, and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The proposed side porch is of the same design and scale as the existing front porch. The new side porch will only encroach one more foot into the setback than the previously approved front porch.¹ Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

¹ It is worthy of note that, if the proposed porch could feasibly be built so that it would sit 11 feet, instead of 10 feet, from the front lot line, no variance would be necessary. See Section 128.B.2.b. In my view, the proposed dimensions of the porch are reasonable and the minimum practically necessary to afford relief.

ORDER

Based upon the foregoing, it is this **19th day of September 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Scott Van Der Meid for a variance to reduce the 50-foot front setback to 10 feet for a porch to be located in an R-20 (Residential – Single) Zoning District is hereby **GRANTED**;

Provided, however, that the variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Appeal Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.

Lapse of Variance: This variance will become void unless the required permits conforming to the variance plan are obtained within two years and substantial construction in accordance therewith is completed within three years from the date hereof. If the variance is granted to allow recording of a final plat, the variance will become void unless the plat is recorded in the Land Records of Howard County within three years from the date hereof. See Section 130.B.2.e.